IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12868 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANKURBHAI HASMUKHBHAI PATEL

Versus

STATE OF GUJARAT AND OTHERS

Appearance:

MR DC DAVE, for the Petitioner

MS DS PANDIT, A.G.P. for Respondent No.1 and 2

Respondent No.3 - None though served

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 27/02/2001

ORAL JUDGEMENT

Rule. Ms.D.S. Pandit, A.G.P. waives service of rule. By consent of counsels for both the parties, this petition is taken up for final hearing today.

2. The petitioner who is a minor has approached this

Court through his guardian, namely, his adoptive father, and hence, legal guardian Mr.Hasmukhbhai Chimanbhai Patel seeking a writ directing the Respondent No.3 to make requisite change in the school records so as to change the name of the petitioner from "Ankurbhai Dineshbhai Patel" to "Ankurbhai Hasmukhbhai Patel" and consequently either issue a fresh school leaving certificate or introduce necessary correction by way of corrigendum in the school leaving certificate already issued to the petitioner.

3. The facts briefly stated are that the petitioner was born on 9th August, 1983 to Dineshbhai Maganbhai Patel and Daxaben Dineshbhai Patel. That on 28th May, 1999 one Shri Hasmukhbhai Chimanbhai Patel adopted the petitioner as his son. The said Shri Hasmukhbhai Chimanbhai Patel is brother-in-law of Dineshbhai, the natural father of the petitioner. In pursuance of the adoption, a deed was drawn on 08/06/1999. Thereafter on 20/01/2000, the change of name of the petitioner from "Patel Ankurbhai Dineshbhai" to "Patel Ankurbhai Hasmukhbhai" was published in Gujarat Govt. Gazette, Part-II at serial No.193 at Page No.59 (exh. 'B'). The petitioner's adoptive father applied to the school authority on 15 November, 2000 seeking appropriate changes in the school leaving certificate and the records of the school, but the same was turned down by respondent No.3-school. On 16/11/2000, the school authority informed that it was not within its power to carry out such changes as the petitioner had already successfully appeared at the Board examination.

4. Thereupon the petitioner approached the District Education Officer, District Anand, but the said authority also vide communication dated 27/29 November, 2000 stated that the petitioner having passed out from the examination conducted by the board it was not possible to grant permission to the school authority to carry out the consequential changes.

5. The case of the petitioner is that, he wishes to prosecute further studies in the United States of America where his adoptive parents are staying and for which requisite steps have already been taken by his adoptive father but in case the school leaving certificate which depicts the name of the petitioner along with that of his biological father is not changed, it would be difficult for the petitioner to rely upon the same for obtaining further admission, in any discipline. It is further submitted that as per provisions of Hindu Adoption and Maintenance Act, 1956, the settled legal position is that

once a legal and valid adoption is shown to have taken place, the adoptive father steps into the shoes of the natural and biological father and thus, would acquire the status of the natural and biological father for all purposes. That the petitioner's ties with his family of birth shall stand severed. It is further submitted that the stand taken by respondent Nos. 2 and 3 is unwarranted because in case the relief sought for by the petitioner is not granted, namely, change of name in the school leaving certificate, it would result in grave and substantial loss and the injury caused to the petitioner would be of irreparable nature. That even otherwise the step adopted by the respondents is against settled legal position and the petitioner should be granted the change sought for.

6. On behalf of respondent No.2 it was contended that as per relevant rules, until the change of name is published in the Government Gazette it would not be open to authority to effect consequential changes, and hence, the application made by the petitioner had rightly been rejected.

7. In view of the fact that the change of name, i.e. incorporating the name of the adoptive father has already been published in Gujarat Government Gazette Part-II dated 20/01/2000 (Exh. 'B') the objections raised on behalf of Respondent No.2 do not survive any more. Therefore, even otherwise as per their own rules, Respondent No.2 is now required to effect the necessary changes and issue appropriate directions to the school authority, namely, Respondent No.3 to carry out the consequential changes in the records of the school and either issue a fresh school leaving certificate or carry out the necessary amendment in the certificate already issued.

8. In view of what is stated hereinbefore, Respondent Nos. 2 and 3 are directed to carry out changes in their records at their respective ends and Respondent No.3 is directed to issue either a fresh school leaving certificate incorporating the change of name or carry out necessary modification in the original certificate already issued to the petitioner.

9. This petition is accordingly allowed, with no order as to costs. Rule made absolute.

(D.A. Mehta, J)

(Katira)